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IN THE SUPREME COURT 1975
OF THE STATE OF UTAH

BRIGAM YOUNG UNIVERSITY
J. Reuben Clark Law School

THE STATE OF UTAH,

Plaintiff-Respondent,

vs.

RAYMOND LEE MILLS,

Defendant-Appellant.

Case No.
13750

BRIEF OF APPELLANT

Appeal from a jury verdict in the Third Judicial District Court,
in and for Salt Lake County, State of Utah,
the Honorable Joseph G. Jeppsen, presiding.

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,

Plaintiff-Respondent,

vs.

RAYMOND LEE MILLS,

Defendant-Appellant.

Case No.
13750

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Appellant, Raymond Lee Mills, appeals from a conviction by a jury of the crime of aggravated sexual assault in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

Raymond Lee Mills was found guilty by a jury of the crime of aggravated sexual assault on January

9, 1974, and was thereafter sentenced to be committed to the Utah State Prison for term prescribed by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction and a new trial.

STATEMENT OF FACTS

During the 1973 Utah State Fair, Bradley Osborn, a nine year old boy at the time, went to the Fair alone on a Friday afternoon. (R. 108, 110) There he met a man running a ride, the Go-Go Mouse, who asked him if he wanted some ride passes. (R. 113, 114, 115) This man got some keys from another man who was running the ferris wheel and went with Bradley to a truck across the river. (R. 116, 133) Inside the truck the man committed oral and anal sodomey upon Bradley Osborn. (R. 119, 120).

This man, Bradley testified, was wearing a yellow shirt with red or blue or green or red spots on it. (R. 114, 115) He was small and about 30 years old, with a slight mustache. (R. 114, 125)

After leaving the truck Bradley went home and when his parents asked him he told his father what happened. (R. 123, 124) The police then took Bradley back to the Fair and walked around with him, asking him to point out the man that took him to the truck.

(R. 124, 148) Bradley testified he was having some trouble finding the man then when he saw the Ferris wheel operator he said "I think that's him," and when asked if he was sure he said "Yes, I think so." (R. 132, 150) At the trial he identified Mr. Mills as the man who took him into the truck. (R. 126)

Bradley Osborn was shown a yellow shirt and said that looked like the one the man was wearing, but it had black spots on it and the one the man wore had other colors. (R. 127, 114, Exhibit 5)

When Bradley Osborn identified Mr. Mills the police took Mr. Mills for questioning. (R. 164) Mr. Mills cooperated and gave them a list of his activities throughout the day. (Exhibit 7, R. 165) Mr. Mills took the police to a trailer where he was staying and said the police could search it. (R. 166) There the police took a yellow shirt with black spots and some pants. (R. 167, Exhibit 5)

All of the ride operators that day were similarly dressed, according to one of the officers. (R. 173, 174)

Mr. Mills testified that he relieved a man known as Gypsy, who was about the same physical appearance as Mr. Mills, at the Go-Go Mouse. (R. 191, 192) Gypsy came to the ferris wheel, where Mr. Mills worked, and asked to borrow the keys to the van. (R. 194) He testified that Gypsy brought the keys back about 6:00 p.m. (R. 198) Mr. Mills went to Geraldine Scott's trailer, about 4:00 p.m., where he left his yellow shirt because it was dirty and returned to work at about

5:00 p.m. (R. 106, 197) He denied ever seeing Bradley Osborn. (R. 198)

Geraldine Scott testified that on the day in question Mr. Mills did come to her trailer and change clothes but she was not sure of the time, but he was there about an hour and a half, he left and shortly after the police came back with him. (R. 179-182).

ARGUMENT

POINT I

APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE.

This court has on several occasions stated the rules concerning the granting of a new trial on the basis that the verdict was not supported by the evidence. In *State v. Cooper*, 114 Utah 531, 201 P.2d 764, 770 (1949), this court stated:

The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court . . . this court cannot substitute its discretion for that of the trial court . . . We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise, discretion on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

While in appellant's case there was no motion for a new trial, the above language would seem to indicate

under what circumstances this court will grant a new trial, even in the absence of a motion for a new trial.

This court has also stated:

If the State's evidence is so 'inherently improbable' as to be unworthy of belief, so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the State's evidence is such that reasonable minds could believe beyond a reasonable doubt that the defendant was guilty, the verdict must be sustained. *State v. Mills*, 122 Utah 306, 249 P.2d 211 (1952).

See also *State v. Horne*, 12 Utah 2d 162, 364 P.2d 109 (1961) for the same rule. This court has later said that before setting aside a jury verdict, "it must appear that the evidence is so inconclusive or unsatisfactory that reasonable minds acting upon it must have entertained reasonable doubt that the defendant committed the crime." (Emphasis in original). *State v. Danks*, 10 Utah2d 162, 350 P.2d 146 (1960), citing *State v. Sullivan*, 6 Utah 2d 110, 307 P.2d (1957). A jury verdict is reversed only when, taking the evidence in the light most favorable to the verdict, the findings are unreasonable." *State v. Berchtold*, 11 Utah 2d 208, 357 P.2d 183 (1960). If the verdict is "supported by sufficient competent evidence" a new trial is to be denied. *State v. Rivenburgh*, 11 Utah 2d 95, P.2d 689 (1960). See also *State v. Schad*, 24 Utah 2d 255, 470 P.2d 246 (1970) for the rule that there must be a "reasonable basis" for the verdict.

It is apparent from these various statements of the law that this court *does* have the power to order a new trial in appropriate cases. This court has said that:

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, in reason, conclude that the defendant's guilt was proved beyond a reasonable doubt. *State v. Williams*, 111 Utah 379, 180 P.2d 551, 555 (1947).

Clearly each case must turn upon its own facts and circumstances as to whether or not a new trial is warranted because the verdict was not supported by the evidence. Appellant contends that his case is one where-in a new trial is merited.

CONCLUSION

For the reason above stated, that the verdict was not supported by the evidence, appellant respectfully submits that the judgment below be reversed and he be granted a new trial.

Respectfully submitted,

BRUCE C. LUBECK
Attorney for Appellant